Ijtihād, Taqlīd & The Closing Of The Doors Of Ijtihād

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Ijtihād

Ijtihād is defined as the total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rules of the *sharī'ah* from their detailed evidences in the sources. It has also been defined as "the effort made by the mujtahid in seeking knowledge of the ahkam (rules) of the sharī'ah through interpretation"

Both these definitions exclude the layman from practicing *ijtihād*. Scholars have laid down fairly stringent conditions for the mujtahid including knowledge of the Arabic language, knowledge of the legal texts of the Qur'ān, knowledge of ḥadīth and the science of ḥadīth, knowledge of ijmā, and knowledge of the maqasiḍ al-sharī'ah. *Ijtihād* is limited to the practical rules of the Sharī'ah. for example the rules and regulations regarding acts of worship as well as the muamalat such as marriage, divorce and trade. Issues of belief are not subject to *ijtihād*.

Ijtihād is clearly sanctioned in Islam. The Prophet (salahu alaihi wa sallam). said: "When a judge exercises *ijtihād* and gives a right judgement, he will have two rewards, but if he errs in his judgement, he will still have one reward[1]"

The process of *ijtihād* began in the time of the Prophet (salahu alaihi wa sallam). He performed *ijtihād* on a number of issues including taking ransom from the captives of Badr. That the latter was the *ijtihād* of the Prophet and not *wahy*, is borne out by Allah's rebuke of the Prophet for this decision.

The Prophet (salahu alaihi wa sallam) said that if two disputing parties ask him to adjudicate between them, he may incorrectly judge in favour of the more eloquent one (due to his eloquence). In this case, the Prophet would only be giving him a piece of the Hell Fire[2]. This shows that the Prophet's *ijtihād* did not guarantee a correct result. If the Prophet, being the most knowledgeable regarding religious matters, was unable to guarantee a correct result from his *ijtihād*, then it follows that those who came after him, were even less likely to guarantee that their *ijtihād* was correct. Ibn Masood said, after giving a ruling: "I am giving my opinion about her. If it is correct, then it is from Allah, but if it is incorrect, then it is from me and Satan"

The Prophet encouraged his Companions to make *ijtihād* in particular situations. For example, he delegated the decision regarding the fate of the Jewish tribe, Banu Qurayzah to Sa'd ibn Mu'ād. He also acknowledged the decision of Amr bin Al 'As to perform *tayammum* when in a state of *janāba* due to the intense coldness of the water.

After the death of the Prophet, the Islamic empire expanded rapidly, and with it came a host of issues which were not specifically covered by the *Sharī'ah.* Abū

[1] Bukhari

[2] Umm Salama reported Allah's Messenger (may peace be upon him) as saying: 'You bring to me, for (judgment) your disputes, some of you perhaps being more eloquent in their plea than others, so I give judgment on their behalf according to what I hear from them. (Bear in mind, in my judgment) if I slice off anything for him from the right of his brother, he should not accept that, for I sliced off for him a portion from the Hell'.

Bakr was appointed as Caliph based upon an analogy with his appointment by the Prophet to lead the people in prayer. If his leadership in religious affairs were sanctioned by the Prophet, then his leadership in worldly affairs had even more right to be accepted. Abū Bakr's war against the non-payers of *zakat*, and the collection of the Qur'ān in one *mushāf* were based on his *ijtihād*. Likewise, 'Umar's suspension of *hadd* for theft during drought, and his suspension of giving *zakat* to *the 'mu'allafat al qulūb*[3]' were all based on *ijtihād*. The likelihood of mistakes in *ijtihād* of the first two rightly guided caliphs was very small. Whenever the caliph could not find a solution to a problem in the *nasṣ*, he would gather together the major companions, many of whom had been forbidden from leaving Madinah for this very purpose, to arrive at a solution. If there was unanimity, it was known as *ijmā*'. Hence *ijtihād* that led to an *ijmā*' was free from the possibility of error. However when no unanimity was reached, the Caliph would make his own *ijtihād* binding, which then became law. The Caliphs encouraged their governors to exercise *ijtihād* if they failed to find an answer in the Qur'ān or Sunnah. In his letter to Abū Mūsā' al-Ash'arī, 'Umar al Khattaab said: "Try to understand matters that perplex you and for which you do not find explicit instructions in the Qur'ān or Sunnah of the Prophet. Acknowledge precedents and similar cases and apply analogy to them, and take the decision which is most pleasing to Allah and most corresponding to justice so far as you see"

Some reasons why scholars differed in their *ijtihād*

There are a number of reasons why rules arrived at by means of *ijtihād* will differ. A word in the Qurj'ān or Sunnah may take more than one literal meaning, for example the word '*qur*' in the verse 'divorced women should wait three *quroo*', can mean 'menses' as well as the 'purity between menses'. Scholars have hence differed as to when the divorce becomes finalised due to their differing in the understanding of the word '*qur*'.

Some words in the Qur'ān can have both literal and figurative meanings. The Qur'ān orders those who have 'touched' women to renew their ablution. The word touch (lams) can literally mean touching by the hand. It can also have the figurative meaning of sexual intercourse. The jurists differed in their interpretation and hence differed in their ruling of the necessity of ablution for a man who literally touches a woman.

With regards to the verse that is *'amm*[4]*,* the *Hanafis* considered it to be *qat'ī*[5] , whereas the other three *madāhibs* considered it to be *zạnnī*[6]. In the event of an '*amm* verse conflicting with the *khāsṣ*, the *jamhū*[7]*r* would use the latter to specify the former.
For example the *hạdīth*, 'Whatever is watered from the sky is subject to charity' is *'amm.* However, another *hạdīth* states: 'There is no charity on less than five *awsaq* (a measure of weight)' which is *khāsṣ*[8]. The *jamhūr* would specify the first

[3] Those whose hearts are to be inclined. towards Islam
[4] The 'āmm is a word which applies to many things, not limited in number, and includes everything to which it is applicable. 'Āmm has a single meaning, but applies to an unlimited number without restriction. An example is the word 'insan' in surah Asr.
[5] When a word indicates a single meaning, and has no room for another interpretation, it is decisive (qat'i) in the indication of the command
[6] When a word has room for various interpretations, and denotes more than one meaning, it is probable (zanni) in the indication of the command.
[7] Majority (of scholars)
[8] The khāsṣ is when a word is applied to a limited number of things, including everything to which it can be applied, e.g '100'. Rulings which are khāsṣ tend not to be open to

ḥadīth with the second, resulting in the ruling that *zakat* is payable on whatever is watered from the sky, provided that the amount is more than five *awsaq*. However the *Hanifis* state that the *'amm ḥadīth,* being of later origin, abrogates the *'khāsṣ*, and therefore there is no *nisab* on *zakat* on agricultural produce. Hence, due to different methodologies in reconciling apparently conflicting textual evidence, jurists arrived at different rulings on the same issue.
When making *ijtihād* on a new issue, the jurists would always first look into the Qur'ān and Sunnah, if nothing was found in these texts, they would look to see if an *ijmā'* existed on the issue. Failing this, they would employ *qiyās*. With regards to the primary sources however, jurists did not always have access to the all of the *ḥadīth* pertinent to the issue. For example, Abū Ḥanīfa ruled that there was no congregational prayer for rain, as he was not aware of the relevant *ḥadīth*. In some cases, the jurists were aware of the *ḥadīth*, but due to their different criteria for the acceptability of *ḥadīth*, some jurists would use it as a basis for their *ijtihad*, whereas others would reject it. This led to different rulings on the same issue. Mālik would reject any *ḥadīth* that conflicted with the customs of the people of Madina, Abū Ḥanīfa stipulated that the *ḥadīth* had to be *mashoor*[9]. Shāfi'ī rejected most *mursal*[10] *ḥadīth*, whereas Ahmed bin Hanbal accepted them.

With regarding to the secondary sources of the *sharī'ah*, jurists differed on which principles were admissible in making rulings. Shāfi'ī rejected the use of *isṭiḥsān*[11] (used by the Hanafis), and the custom of the people of Madinah. Jurists also differed on the validity of *ijmā'* after the Companions.

Forbiddance of Taqlīd

Imaam Shāfi'ī states in his Risalah that "[knowledge obtained through *ijtihād*] is binding only on the one who exercised *qiyās*[12] and not on other men of knowledge". This point is further emphasised in *Al-Umm* in which Shāfi'ī argues that the scholar is only bound by his own *ijtihād*, and that he may not abandon that which he considers to be true in order to blindly follow another scholar. This statement is in direct contradiction to those who state that it is binding upon a person to follow one scholar in all matters of the religion. When a scholar makes a *ijtihād*, he is either right or wrong. If he is right then he has correctly interpreted the will of the Law Giver. If he is wrong in his *ijtihād*, he has (inadvertently) contradicted the will of the Law Giver, although he still receives one reward for his sincere *ijtihād*.
If one believes that the *ijtihād* of a scholar contradicts textual evidence, then he has no choice but to follow the clear textual evidence, irrespective of the status of this scholar. In other words, he follows the One who never errs; Allah (and His Messenger). To do otherwise would be to abandon the infallible sayings of Allah and His Messenger in favour of one who is fallible. Taqi-ud-Deen Subki said: "For me, the best thing is to follow the *ḥadīth*. A person should imagine himself in front of the Prophet just having heard it from him, would there be leeway for him

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ta'wil. e.g. in the 'feeding of ten poor persons', as an expiation for a futile oath, the word 'ten' is specific, and does not admit ta'wil.

[9] That which is narrated by three of more people at every level, but does not reach the condition of muwaatir.

[10] a report from whose isnad the Companion is missing. i.e. the tabi'ee says: 'the Prophet said'

[11] Istihsan is the abandonment of one hukm for another that is considered better on the basis of the Qur'ān, Sunnah or consensus e.g. the decision of Umar Bin Khattab to suspend the penalty of amputation of hand during famine is an example of Istihsan.

[12] Qiyas is the extention of a Shariah ruling from an original case (Asl) to a new case (Far') because the new case has the same effective cause (Illah) as the original case.

to delay acting on it? No by Allah!" Taqi-ud-Deen Ibn Taymiyyah said that following one *Imām* in all that he says is tantamount to associating partners with Allah in the *Sharī'ah*.

No-one from the first three generations considered the statement of a single man to be binding unless it agreed with the truth[13]. Shanqīti stated that the laymen after the death of the Prophet, when faced with a new issue would ask a knowledgeable companion for a ruling without specifying anyone in particular. If a new situation arose, he would not necessarily go back to the original companion, but would ask whoever he wished from the knowledgeable companions. In other words, he would ask one mufti on one occasion, and another mufti on a different occasion; the notion of just restricting oneself to one mufti did not exist in the first three generations. Hence a ruling arrived at by *ijtihād* is not binding on anyone other than those who consider them to be the truth."

Were the Gates of *Ijtihād* Closed?

It is a common belief among many Muslims that the gates of *ijtihād* were closed at the end of the third century. However *ijtihād* clearly continued well after the end of the third century. Until the sixth century, there was no mention in the book of *usul al fiqh* about the closure of the gates of *ijtihād*. As we shall show, the alleged closure of gates of *ijtihād* was a fallacy; it never occurred.

***Ijtihād* in the Fourth Century**

According to Subki, a number of fourth century scholars including Ibn Surayj, Tabari, Ibn Khuzayma, and Ibn Mundhir were *mujtahids* who differed on many issues with the Shāfi'ī school. Tabari (d310) even founded his own *madhab*. Abū Ḥasan al-Dariki (d375) differed substantially from the Shāfi'ī school, often making rulings that differed from both Shāfi'ī and Abū Ḥanīfa. Hence we have five scholars, (mentioned above) who exercised *ijtihād*, after the alleged closure of the gates of *ijtihād*.

***Ijtihād* in the Fifth Century**

In the fifth century, a number of scholars condemned *taqlīd* and hence implicitly supported the use of *ijtihād*. For example Ibn 'Abd al-Barr (d463) wrote an entire chapter in refutation of *taqlīd*. Al-Khatib al-Baghdadi and Juwayni (d478) considered the ability to perform *ijtihād* as an essential requirement for the head of state to be able to discharge is duties effectively. In the event of his inability to perform *ijtihād*, Juwayni suggested that the task be delegated to the jurists. Likewise, al-Mawardi (d450) considered it essential that the mufti and the *qādī* be able to perform *ijtihād* Juwayni is described by Subki as someone who uses his own independent reasoning and *ijtihād* as opposed to following the principles of Shāfi'ī. Hence it is clear that *ijtihād* was flourishing in the fifth century. Many scholars, although not all, ascribed themselves to a *madhab*, however a number of scholars did not restrict themselves to the principles of their *madhab*.

As well as *ijtihād* in fiqh, many scholars who came in the later centuries made important contributions to the development of the legal principles of their *madhab*. Ibn Qudama, a seventh century jurist, made important contributions to the development of *Hanbali* fiqh. Likewise Sarakhsi (d490) contributed original

[13] Shah Waliullah states in Hujjatullaahil Baalighah that blind following began in the fourth century of Islam. Thus in the first three generations of Muslims whom the Messenger of Allah described as the best of people, blind following was unknown.

material to *Hanafi* thought. The belief that the founder of each of the four *madhabs* developed all of the legal principles of their *madhab* and that later scholars based all of their legal decisions on the basis of these founding principles, does not stand up to historical reality. The *madhab* of Imām Ahmed for example was developed by Abū Bakr al-Khallāl and some of his contemporaries.

Now that we have established that the gates of *ijtihād* did not close at the end of the third century, and that *ijtihād* flourished in the fourth and fifth centuries, we examine the question: did the gates of *ijtihād* close at a later period?

The discussion of the closing of the gates of *ijtihād* is inextricably linked with the discussion regarding the possibility of the extinction of *mujtahids* although the latter preceded the former by at least two centuries. For if there were no *mujtahids*, there would be no *ijtihād*. This discussion concerning the possible extinction of *mujtahids* was first raised by Ibn Aqil and then his opponent Amidi (d632) and was initially a theological rather than a juristic discussion. However, the term *mujtahid* has more than one meaning. When al-Rafi'i concluded that Muslims "*seemed to agree*" there were no *mujtahids* in his era, it is likely that he was referring to what is known as *mujtahid mutlaq* – or an independent founder of a school of law. Up to the end of the eighth century, other similar claims regarding the absence of *mujtahids* were vague, and did not imply *ijma*'on the issue.

Jalaluddin Al-Suyuti's (d 911) claim that he was a *mujtahid*, shows that *ijtihād* continued into the tenth century. The proponents of 'closing the gates' had another problem; they were unable to reconcile the Prophetic ḥadīth regarding the appearance of a *mujaddid*[14] in *every* century, (who by default had to be a *mujtahid*) with their belief of disappearance of *mujtahids*.

The tenth century and after saw a decline in the number of jurists exercising *ijtihād*. The seven fold categories of jurists, in which the latter four categories were all muqallids, was rigorously promoted by *Hanafis* to argue their view that *mujtahids* were now extinct. This claim was strongly denied by the *Hanbalis* and many *Shāfi'ī's* – hence there was no *ijmā*' on the alleged closure of the gates of *ijtihād*. Such an *ijmā*', even if it was to occur within only the Hanafi *madhab*, is still problematic given that *ijmā*' is defined as the consensus of the *mujtahids* of the time. Now would the *mujtahids* of a particular era all agree that there were no more *mujtahids* left?
Subsequent centuries saw a number of scholars strongly condemning taqlīd, and re-affirming the existence of *ijtihād*. Such scholars included Ibn 'Abd al-Wahhab (d1202) and Shawkaani (d1255).

Hence we can conclude that the closing of the gates of *ijtihād* was a pure fiction. No evidence has ever been presented as to the exact date when the scholars agreed to the closure of the gate, nor have the names of the scholars who agreed to close the gate ever been mentioned.

[14] *Allaah's Messenger,* sallallaahu alaihi wa sallam,said, *"Allaah will raise for this Ummah at the head of every hundred years, he/those who will revive its religion for it."* 'Awnul-Ma'bood (11/385-396) of al-Azeemabaadee. i.e. he will make the sunnah clear from innovation and increase knowledge and aid its people and curb and subdue the innovators.

Further Reading

Usool al –Fiqh. The Methodology of Islamic Law Made Easy. Al- ʻAbbaad, ʻAbdul-Muhsin.

The Evolution of Fiqh (Islamic Law and the Madh-habs) Phillips, Abū Ameenah Bilal.

http://www.salafimanhaj.com/pdf/SalafiManhaj_DoorOfIjtihad.pdf

http://www.salafimanhaj.com/pdf/RefutationofZaydShaakir.pdf

http://abdurrahman.org/sunnah/Fiqh__Blind_Following_of_Madhhabs__edited_by_Sh_Al_Hilalee.pdf